

## NOTICE OF PROPOSED RULE

Department of Environmental Protection  
Division of Water Resource Management

RULE NO.:	RULE TITLE:
62-330.010	Purpose and Implementation
62-330.050	Procedures for Review and Agency Action on Exemption Requests
62-330.060	Content of Applications for Individual and Conceptual Approval Permits
62-330.090	Processing of Individual and Conceptual Approval Permit Applications
62-330.201	<del>Formal</del> Determinations of the Landward Extent of Wetlands and Other Surface Waters
62-330.340	Transfer of Permit Upon Change in Ownership or Control
62-330.402	Submittal and Processing of General Permits

**PURPOSE AND EFFECT:** The Department of Environmental Protection (Department) has proposed to amend Chapter 62-330, F.A.C., Environmental Resource Permitting. These amendments streamline and clarify language for regulated entities that would require a State 404 Program Permit after assumption of the State 404 Program.

**SUMMARY:** Amendments include incorporating updated version of water management district handbooks, revising incorporated forms to include a State 404 Program Permit section, incorporating a new form, and clarifying that applicants may waive Environmental Resource Permit timelines so that Agency actions can be issued concurrently. Amendments to Applicant's Handbook Volume I include updating form titles, clarifying the process for the landward delineation of wetlands, adding unincorporated appendices for use when delineating the landward extent of wetlands, and providing for the use of state or local authorizations for construction activities in right of ways as evidence of real property interest.

**STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:** The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the Agency. The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: Information known to the agency regarding costs of preparation of submittals required by the rules, and based on the extensive expertise and experience of agency staff, it was determined that a SERC was not necessary and that the rule amendments will not require legislative ratification. Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

**RULEMAKING AUTHORITY** (formerly "Specific Authority"): 373.026(7), 373.043, 373.044, 373.113, 373.116, 373.118, 373.171, 373.413, 373.4131, 373.4135, 373.4145, 373.4146(2), 373.418, 373.421(2), 403.0877, 403.805(1), FS.

**LAW IMPLEMENTED:** 120.54(5)(a), 120.569(2), 373.026, 373.042, 373.109, 373.116(2), 373.118, 373.119, 373.406, 373.409, 373.413, 373.4131, 373.4135, 373.4136, 373.414, 373.4141, 373.4142, 373.4145, 373.4146, 373.416, 373.418, 373.421, 373.423, 373.426, 373.428, 373.429, 373.439, 373.441, 373.813(1), 668.003, 668.004, 668.50, FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAR.

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 5 days before the workshop/meeting/ by contacting: Kristin Gousse, 2600 Blair Stone Road, Tallahassee, Mail Station 3500, Florida 32399, 850-245-8483, [ [HYPERLINK "mailto:Kristin.Gousse@FloridaDEP.gov"](mailto:Kristin.Gousse@FloridaDEP.gov) ].

If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1 (800) 955-8771 (TDD) or 1 (800) 955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Kristin Gousse, 2600 Blair Stone Road, Tallahassee, Mail Station 3500, Florida 32399, 850-245-8483, [ [HYPERLINK "mailto:Kristin.Gousse@FloridaDEP.gov"](mailto:Kristin.Gousse@FloridaDEP.gov) ].

THE FULL TEXT OF THE PROPOSED RULE IS:

62-330.010 Purpose and Implementation.

(1) through (3) No change.

(4) This chapter is used in conjunction with an Applicant's Handbook, in two volumes, as follows:

(a) Applicant's Handbook Volume I, "General and Environmental" (hereinafter "Volume I"), applies statewide to all activities regulated under Chapter 62-330, F.A.C. It includes explanations, procedures, guidance, standards, and criteria on what is regulated by this chapter, the types of permits available, how to submit an application or notice for a regulated activity to the Agencies, how applications and notices are reviewed, the standards and criteria for issuance, and permit duration and modification. Volume I, including Appendices G, H, and I only, is incorporated by reference herein, (effective date ~~June 1, 2018~~) (<http://www.flrules.org/Gateway/reference.asp?No=Ref-XXXX> and <http://www.flrules.org/Gateway/reference.asp?No=Ref-XXXX>).

(b) An Applicant's Handbook Volume II (hereinafter "Volume II"), has been adopted for use within each District. Each District's Volume II is incorporated by reference herein and in the rules listed below, which also are incorporated by reference herein. These rules and Handbook Volumes are available as provided in subsection (5), below.

1. through 3. No change.

4. Southwest Florida Water Management District, Applicant's Handbook Volume II, is incorporated by reference herein, (~~June 1, 2018~~~~October 1, 2013~~) (<http://www.flrules.org/Gateway/reference.asp?No=Ref-XXXX>), and in Rule ~~40D-1.660~~~~40D-4.091~~, F.A.C., (~~June 1, 2018~~~~October 1, 2013~~) (<https://www.flrules.org/Gateway/reference.asp?No=Ref-XXXX>).

5. South Florida Water Management District, Applicant's Handbook Volume II, including Appendices A through D, is incorporated by reference herein, (~~May 22, 2016~~~~October 1, 2013~~) ([ [HYPERLINK "https://www.flrules.org/Gateway/reference.asp?No=Ref-XXXX"](https://www.flrules.org/Gateway/reference.asp?No=Ref-XXXX) ]).

A copy of the incorporated material identified above may be obtained from the Agency Internet site, <https://floridadep.gov/water/water/content/water-resource-management-rules#ERP>, or as described in subsection 62-330.010(5), F.A.C.

(5) through (6) No change.

*Rulemaking Authority 373.026(7), 373.043, 373.118, 373.418, 373.4131, 373.4145, 403.805(1) FS. Law Implemented 373.409, 373.413, 373.4131, 373.414(9), 373.4141, 373.4142, 373.4145, 373.416, 373.423, 373.426, 373.428, 373.429, 373.441 FS. History—New 10-1-13, Amended 6-1-18, \_\_\_\_\_.*

62-330.050 Procedures for Review and Agency Action on Exemption Requests.

(1) No change.

(2) If a person desires Agency verification of qualification to conduct an exempt activity (other than for silviculture, for which the procedures in Rule 62-330.0511, F.A.C., apply), and a self-certification is not available or the person chooses not to use a self-certification, they may submit a written or electronic Form 62-330.050(1) – "Request for Verification of an Exemption," (effective date ~~June 1, 2018~~), incorporated by reference herein (<http://www.flrules.org/Gateway/reference.asp?No=Ref-XXXX>), or a letter that clearly requests an exemption verification. A copy of the form may be obtained from the Agency, as described in subsection 62-330.010(5), F.A.C. Such request must include:

(a) through (f) No change.

(3) through (9) No change.

(10) A person requesting verification of an exemption may waive the timeframes in subsections (4) and (5), above, if the project also requires a State 404 Program authorization under Chapter 62-331, F.A.C., that must be reviewed using the timeframes in that chapter. Waiving the timeframes allows the Agency(ies) to issue agency action for the verification of exemption and the State 404 Program authorization at the same time. This is strongly recommended by the Agencies to ensure consistency and to reduce the potential need for project modifications to resolve inconsistencies

that may occur when the agency actions are issued at different times.

*Rulemaking Authority 373.026(7), 373.043, 373.4131, 373.4145, 403.805(1) FS. Law Implemented 373.109, 373.406, 373.4131, 373.4145, 403.813(1), 668.003, 668.004, 668.50 FS. History—New 10-1-13, Amended 6-1-18,\_\_\_\_\_.*

#### 62-330.060 Content of Applications for Individual and Conceptual Approval Permits.

Materials to include in an application or notice for a permit are described below. Applicants are encouraged to have a pre-application meeting or discussion with Agency staff prior to submitting the application or notice.

(1) An application for an individual permit or conceptual approval permit shall be made on Form 62-330.060(1), “Application for Individual and Conceptual Approval Environmental Resource Permit, State 404 Program Permit, and Authorization to Use State-Owned Submerged Lands,” including the information required in the applicable Sections A through I H (effective date), incorporated by reference herein (<http://www.flrules.org/Gateway/reference.asp?No=Ref-XXXX>), a copy of which may be obtained from the Agency, as described in subsection 62-330.010(5), F.A.C., or by use of the equivalent e-application form of the applicable Agency. Attachments 1, 2, and 3 of the form (containing agency contacts and a summary of the application fees related to applications and notices) are not incorporated by reference, but are available at <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/forms-environmental-resource>.

(2) through (4) No change.

*Rulemaking Authority 373.044, 373.113, 373.171, 373.4131 FS. Law Implemented 373.042, 373.413, 373.4131, 373.416, 668.003, 668.004, 668.50 FS. History—New 10-1-13, Amended 6-1-18,\_\_\_\_\_.*

#### 62-330.090 Processing of Individual and Conceptual Approval Permit Applications.

(1) through (8) No change.

(8) An applicant may waive the timeframes in section 5.5.4 of Volume I if the project also requires a State 404 Program authorization under Chapter 62-331, F.A.C., that must be reviewed using the timeframes in that chapter. Waiving the timeframes allows the Agency(ies) to issue agency action for both authorizations at the same time. This is strongly recommended by the Agencies to ensure consistency between the authorizations and to reduce the potential need for project modifications to resolve inconsistencies that may occur when the agency actions are issued at different times.

*Rulemaking Authority 373.026(7), 373.043, 373.116, 373.118, 373.413, 373.4131, 373.4145, 373.418, 403.805(1) FS. Law Implemented 373.109, 373.118, 373.4131, 373.4141, 373.4145 FS. History—New 10-1-13, Amended 6-1-18,\_\_\_\_\_.*

#### 62-330.201 ~~Formal~~ Determinations of the Landward Extent of Wetlands and Other Surface Waters.

(1) For any application that requires a determination or assessment of the landward extent of wetlands and other surface waters pursuant to section 7.1 of Volume I, Agency staff shall use Form 62-330.201(1), “Chapter 62-340, F.A.C., Data Form”, (effective date), incorporated by reference herein (<http://www.flrules.org/Gateway/reference.asp?No=Ref-XXXX>), as described in Volume I section 7.1.1, to document verification of determinations of the landward extent of wetlands and other surface waters for formal determinations and for applications for individual and conceptual approval permits. The “Chapter 62-340, F.A.C., Data Form Guide” in Appendix J of Volume I, and the “Chapter 62-340, F.A.C., Data Form Instructions” in Appendix K of Volume I, is available to assist staff in completion of the form, and to assist other environmental professionals in performing delineations.

(a) For the delineation of the landward extent of wetlands and other surface waters, at least one data point along the delineation boundary shall be verified and documented by the Agency during the visual site inspection pursuant to Chapter 62-340.100(1) F.A.C. A delineation data point will be documented for each homogenous boundary within the site inspection area. One delineation data point representative of homogeneous boundaries found in other locations throughout the site is sufficient for documentation. Documentation of a delineation data point shall include two data forms; one representative of the waterward area adjacent to the data point, the other representative of the landward or upland area adjacent to the data point. The two complete data forms at a delineation data point will document failure or

satisfaction of all methodology criteria pursuant to Chapter 62-340 F.A.C., and changes in evidence used to determine the boundary delineation at that point.

(b) For identification or conclusions regarding the absence or presence of a non-wetland surface water, wetland, or upland classification by the Agency within the site inspection area, at least one data point within homogenous areas of classification shall be verified and documented by the Agency during the visual site inspection pursuant to Chapter 62-340.100(1), F.A.C. One data point representative of homogeneous areas found in other locations throughout the site is sufficient for documentation. Documentation of an identification data point shall include one data form representative of the area of classification. The data form at an identification data point will document failure or satisfaction of all methodology criteria pursuant to Chapter 62-340, F.A.C., and evidence used to determine the upland, wetland, or non-wetland surface water classification.

(2)-(4) Formal determinations.

(a) A real property owner, an entity having a contract to purchase real property, an entity having the power of eminent domain, or any other person who has legal or equitable interest in real property, may petition the Agency for a formal determination of the landward extent of wetlands and other surface waters for that property pursuant to Section 373.421(2), F.S. A formal determination means the Agency will make a binding determination of the landward extent (boundaries) of wetlands and other surface waters as defined by Chapter 62-340, F.A.C. A formal determination is binding on the real property for which that determination is sought for as long as the determination is valid, in accordance with Sections 373.421(2) and (3), F.S. If the petitioner is not the owner of the land, the petitioner must provide the Agency with information sufficient to contact the current owner, and the Agency shall provide notice of receipt of the petition to the landowner.

(b) (2) Procedures for the submittal, review, noticing, and action on a petition for a formal determination are contained in sections 7.2 through 7.2.7 of Volume I. The petition shall be submitted using Form 62-330.201(2+), "Petition for a Formal Determination of the Landward Extent of Wetlands and Other Surface Waters," (effective date ~~June 1, 2018~~), incorporated by reference herein (<http://www.flrules.org/Gateway/reference.asp?No=Ref-XXXX>). It shall be submitted with the fee prescribed in Rule 62-330.071, F.A.C.

*Rulemaking Authority 373.026(7), 373.043, 373.4131, 373.421(2), 403.0877 FS. Law Implemented 120.54(5)(a), 373.026, 373.4131, 373.421(2), 373.441 FS. History--New 7-4-95, Amended 8-14-96, 8-16-98, 2-19-03, Formerly 62-343.040, Amended 10-1-13, 6-1-18,\_\_\_\_\_.*

62-330.340 Transfer of Permit Upon Change in Ownership or Control.

(1) through (2) No change.

(3) The person requesting transfer of the permit shall submit to the Agency a completed Form 62-330.340(1), "Request to Transfer Environmental Resource and/or State 404 Program Permit," incorporated by reference herein (effective date ~~June 1, 2018~~) (<http://www.flrules.org/Gateway/reference.asp?No=Ref-XXXX>), a copy of which may be obtained from the Agency, as described in subsection 62-330.010(5), F.A.C., together with the permit modification fee prescribed by the Agency as set forth in Rule 62-330.071, F.A.C. A proposed new permittee shall demonstrate that it has sufficient real property interest in or control over the land consistent with subsection 62-330.060(3), F.A.C.

(a) The Request to Transfer Environmental Resource and/or State 404 Program Permit shall be processed in the same manner as a minor modification as provided in subsection 62-330.315(2), F.A.C.

(b) The proposed new permittee shall include demonstration or documentation with the request that it meets the requirements for being an acceptable operation and maintenance entity provided in subsections 62-330.310(2); and (3), F.A.C., if applicable.

(4) Upon receipt of the completed Request to Transfer Environmental Resource and/or State 404 Program Permit form and applicable processing fee, the Agency shall approve the permit transfer unless it determines that the proposed permittee or co-permittee has failed to provide reasonable assurances that it qualifies to be a permittee or that it can meet the permit conditions.

(a) through (b) No change.

(5) through (6) No change.

*Rulemaking Authority 373.026(7), 373.043, 373.118, 373.4131, 373.4145, 373.418, 403.805(1) FS. Law Implemented 373.118, 373.109, 373.413, 373.4131, 373.4142, 373.4145, 373.416, 373.426, 373.429, 668.003, 668.004, 668.50 FS. History--New 10-1-13, Amended 6-1-18,\_\_\_\_\_.*

62-330.402 Submittal and Processing of General Permits.

(1) A person wishing to construct, operate, maintain, alter, abandon, or remove projects under a general permit

shall provide notice using Form 62-330.402(1), "Notice of Intent to Use an Environmental Resource and/or State 404 Program General Permit," (effective date June 1, 2018), incorporated by reference herein (<https://www.flrules.org/Gateway/reference.asp?No=Ref-XXXX>), a copy of which may be obtained from the Agency, as described in subsection 62-330.010(5), F.A.C. The notice must be received by the applicable Agency at least 30 days prior to initiating the activities authorized by the general permit, or at such other time as specified in the general permit. Notices for general permits that identify the reviewing agency as the Department shall be submitted to the Department instead of a District.

(2) through (6) No change.

(7) A person may waive the timeframes in subsection (4), above, if the project also requires a State 404 Program authorization under Chapter 62-331, F.A.C., that must be reviewed using the timeframes in that chapter. Waiving the timeframes allows the Agency(ies) to issue agency action for both authorizations at the same time. This is strongly recommended by the Agencies to ensure consistency between the authorizations and to reduce the potential need for project modifications to resolve inconsistencies that may occur when the agency actions are issued at different times.  
*Rulemaking Authority 373.044, 373.113, 373.118, 373.413, 373.4131 FS. Law Implemented 373.116(2), 373.118(3), 373.413, 373.4131, 373.416, 373.426, 668.003, 668.004, 668.50 FS. History--New 10-1-13, Amended 6-1-18,\_\_\_\_\_.*

NAME OF PERSON ORIGINATING PROPOSED RULE: Alex Reed, Director, Division of Water Resource Management

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Noah Valenstein, Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 12, 2019

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: May 11, 2018